

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	No. 02 CR 1050
)	Hon. James B. Zagel
JOSEPH LOMBARDO, also known as)	
“The Clown”)	

**GOVERNMENT’S RESPONSE TO DEFENDANT’S
MOTION TO VACATE SPECIAL ADMINISTRATIVE MEASURES**

The UNITED STATES OF AMERICA, by ZACHARY T. FARDON, United States Attorney for the Northern District of Illinois, hereby submits this response in to defendant Joseph Lombardo’s motion to vacate special administrative measures (“SAM”) imposed upon him at the direction of the Attorney General.

ARGUMENT

This Court Does Not Have Jurisdiction Over the Motion.

This is not the first time defendant Lombardo has previously asked this Court to vacate the special administrative measures imposed on him. He did so by a letter to the Court earlier this year. At that time, this Court denied the request, and said: “I do not have the authority to enter such an order. If any court has such authority, it would be the district court in which the institution is located, which is not this district.” R. 1539.

The Court’s earlier decision, which is overlooked in the defendant’s most motion requesting the very same relief, remains correct. Indeed, the defendant cites no authority whatsoever for the relief he seeks from this Court. This Court’s judgment is

final and it no longer has jurisdiction. The defendant does not claim that habeas corpus statutes supply the requisite jurisdiction to this Court, nor could he. *Robinson v. Sherrod*, 631 F.3d 839, 840-41 (7th Cir. 2011) (collecting cases). These sorts of challenges, when amenable and ripe for adjudication, are presented in a fresh complaint in the district of confinement, not in a motion in a terminated case in the district of conviction. *E.g.*, *United States v. Al-Owhali*, 687 F.3d 1286 (10th Cir. 2012) (defendant convicted in the Southern District of New York and confined in the United States Penitentiary, Administrative Maximum in Florence, Colorado, filed suit in the District of Colorado).

But the defendant does not even properly allege that this matter is ripe for federal court review in any forum, let alone this one. In addition to the obvious jurisdictional problem noted above, the defendant does not contend that he has exhausted his administrative remedies. *See* 28 C.F.R. § 501.3(e) (specifying that challenges to special administrative measures are subject to Administrative Remedy Program, 28 C.F.R. Part 542). *See also* 42 U.S.C. § 1997e (prohibiting federal court action challenging conditions of confinement prior to exhaustion); *United States v. Troya*, No. 06-80171-Cr, 2008 WL 2537145, at *3-4 (S.D. Fla. June 24, 2008) (collecting cases). A preliminary inquiry at the defendant's institution has not turned up any such administrative challenge. As such, the motion should be dismissed.

WHEREFORE, the government respectfully requests that the Court enter an order (i) dismissing the Motion; and (ii) granting such other and further relief as may be just and proper.

Dated: Chicago, Illinois
January 17, 2014

Respectfully submitted.

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CERTIFICATE OF SERVICE

Amarjeet S. Bhachu, an Assistant United States Attorney assigned to the instant matter, hereby certifies that the GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION TO VACATE SPECIAL ADMINISTRATIVE MEASURES was served on January 17, 2014, in accordance with FED. R. CRIM. P. 49, FED. R. CIV. P. 5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers.

/s/ Amarjeet S. Bhachu _____
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